

DUNCAN MILLER

IBLA 78-152

Decided December 5, 1978

Appeal from decision of the Montana State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer M 38793 subject to compliance.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

A decision by BLM which states that an oil and gas lease offer must be rejected because the offeror did not submit evidence with his drawing entry card as to who affixed a facsimile signature thereon and how his offer was formulated is erroneous. However, where BLM allows the offeror a last chance to submit this information prior to rejecting the offer, that decision will not be vacated, but will be modified and regarded as a simple request for additional information from which to determine whether the offeror's failure to file an agency statement requires rejection of his offer per 43 CFR 3102.6-1(a)(2).

2. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

A request to an oil and gas lease offeror for additional information from which to determine whether his failure to file an agency statement requires rejection of his offer per 43 CFR 3102.6-1(a)(2) need not demand information regarding whether the agent who signed the offer card, if any, has an interest in the offer, as the offer will be rejected in these circumstances because no agency statement was filed, regardless of whether or not the agent has an undisclosed interest in the offer.

3. Oaths—Oil and Gas Leases: Applications: Attorneys- in-Fact or Agents

Under 43 CFR 1821.3-1, information submitted by an oil and gas offeror pursuant to a request by BLM need not be made by affidavit under oath.

4. Rules of Practice: Appeals: Effect of

When an appeal is filed with the Board of Land Appeals from a decision made by an official of the Bureau of Land Management, that official loses jurisdiction of the case and has no further authority to take any action concerning it until his jurisdiction over the matter is restored by action dispositive of the appeal.

APPEARANCES: Duncan Miller, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Duncan Miller (appellant) submitted a simultaneous oil and gas drawing entry card for parcel MT 104 in the November 1977 drawing by the Montana State Office, Bureau of Land Management (BLM), and this card was drawn with first priority. The card bears a facsimile of Miller's signature in the space provided on the card for the applicant's signature.

On November 7, 1977, BLM issued a decision rejecting Miller's offer subject to compliance with its demand that he submit affidavits under oath concerning aspects of the affixing of the facsimile signature on the card. On November 23, 1977, Miller requested additional time to respond to this demand. On November 28, 1977, BLM issued another decision repeating its rejection of his offer subject to compliance within 30 days, and making the additional demand that he file environmental stipulations within this time.

[1] On December 23, 1977, Miller filed completed environmental stipulation forms, but appealed from BLM's decision rejecting his offer subject to compliance with its demand that he submit affidavits concerning the facsimile signature. On January 5, 1978, while the matter was before this Board on appeal, the Chief, Minerals Adjudication Section, Montana State Office, wrote Miller in response to his notice of appeal as follows:

Your simultaneous offer serialized M 38793 obtained priority in the October 1977 simultaneous drawing for parcel number MT 104. The signature on the reverse of your

drawing entry card is a facsimile signature which appears to have been affixed through the use of a rubber stamp.

Your offer is hereby rejected because no evidence was submitted with your card as to how your offer was formulated and who affixed your facsimile signature on the card. [Emphasis supplied.]

This action by BLM was erroneous. Miller was not required to submit evidence with his card as to who affixed the facsimile signature or how his offer was formulated.

If BLM desires to inquire whether the offeror's "agent," as we have defined this term (Evelyn Chambers, 27 IBLA 317, 83 I.D. 533 (1976); Robert C. Leary, 27 IBLA 296 (1976)), signed the card on his behalf, the Bureau may require an offeror to submit evidence as to the circumstances surrounding the signing of the card, but only after his card has been selected. Ray H. Thames, 31 IBLA 167 (1977) ^{1/}; Charlotte L. Thomson, 31 IBLA 3 (1977); Chambers, *supra*; Leary, *supra*. If the offeror declines to submit this information, his offer properly may be rejected. Neil Hirsch, 35 IBLA 125 (1978); Ricky L. Gifford, 34 IBLA 160 (1978).

BLM apparently confused this requirement (that the offeror submit additional evidence after his card is selected) with the requirement set out in 43 CFR 3102.6-1(a)(2), that he submit an agency statement along with the offer card, on pain of rejection. However, BLM apparently realized that it could not summarily reject Miller's offer simply because he had not filed information concerning its signing along with his offer, as it gave him a last opportunity to submit this information before final rejection of his offer. Thus, although BLM inaccurately stated that the information was required to be filed with the card, and that the offer should be rejected because it was not, BLM mitigated the effect of this error by allowing Miller a last chance to submit this information. Accordingly, it is unnecessary to vacate BLM's decision.

However, we note that, as it presently reads, BLM's decision requires that a person who submits an offer card bearing a facsimile signature must also submit evidence with the card as to how the offer was formulated and who affixed the facsimile signature on the card. No such requirement exists under the regulations. The Montana State Office should modify its standard decision format to remove language concerning this requirement, and should instead phrase its decision as a demand for additional information. It should explain to the applicant that additional information is required because it is necessary to determine whether an agent or attorney-in-fact signed the

^{1/} Judicial review pending.

card, on behalf of the offeror in order to ascertain whether the requirements of 43 CFR 3102.6-1(a)(2) have been met by the applicant.

[2] We also note that the Montana State Office's decision unnecessarily demands information concerning the interest in the offer, if any, of the person who signed the card on the applicant's behalf. Under 43 CFR 3102.6-1(a)(2), the agency statement which is required when the offeror's agent places the signature on the card must contain a statement concerning the interest of the agent in the offer. However, at this stage of processing of Miller's offer, it is no longer necessary to find out whether the agent who signed the card, if any, had such an interest, as this information must be submitted in a statement filed along with the offer card, and failure to do so may not be cured by submitting it subsequently. Thus, if Miller did utilize the services of an agent or attorney-in-fact who signed his offer card for him, his offer would have to be rejected, as the separate agency statements were not filed with his offer card, and regardless of whether or not his agent or attorney-in-fact had an undisclosed interest in the offer. Accordingly, BLM need not demand this information from offerors whose cards bear facsimile signatures.

[3] BLM's demand for information requires that Miller submit information in the form of "an affidavit under oath," signed by Miller and by the person who affixed his facsimile signature to the drawing entry card, each signature on the sworn affidavit to be witnessed by two persons. This requirement is incorrect. Under 43 CFR 1821.3-1, the requirement that statements be made under oath is expressly eliminated in all but several specific unrelated circumstances. Under 43 CFR 1821.3-1(b) and (c), false statements will subject the maker to criminal penalties and/or rejection of lease offers. These sanctions are deemed sufficient to obviate the need for filing statements under oath.

Finally, we feel compelled to comment on the letter dated January 5, 1978, from the Chief, Minerals Adjudication Section, responding to Miller's statement of reasons. This letter contains a misstatement which must be corrected.

Miller argued in his statement of reasons that it was unnecessary for him to file an affidavit in the instant case, as he had previously filed an affidavit in another case, which apparently presented facts establishing that no agency statement was required. However, BLM, in its discretion, may require an offeror to submit evidence concerning whether someone other than himself signed this offer card in every case where the offer card bears a facsimile signature, and where no agency statement was filed with the offer card. This is done so that BLM can determine whether the card was signed by an agent or attorney-in-fact on behalf of the offeror, in which event BLM would have to reject the offer under 43 CFR 3102.6-1(a)(2). That

an offeror has signed one offer card himself does not indicate that he has also signed a later card himself. Thus, the correct response to this argument could have been that Miller's having previously filed an affidavit concerning the circumstances surrounding the affixing of a facsimile signature in another case did nothing to meet the requirements in the instant case.

However, the Chief responded as follows to Miller's argument:

Speaking from memory and that alone, you did furnish an affidavit such as we require, in connection with a previous oil and gas lease, but what that lease number may be I don't know and you have not told us. Even if you had done so it would not have altered our position in this particular case, or any other oil and gas case for that matter irrespective of the offeror, where similar conditions exist. The integrity and validity of each oil and gas lease must be fully and independently supported by the documents in the file. There can be no reference to documents in previous actions, inactive or dead case files to support such validity or integrity. It is the holding of this desk such a position cannot be changed. [Emphasis supplied.]

The statement underscored above is incorrect. Under 43 CFR 3102.3-1, 3102.4-1, 3102.5-2, and 3102.6-1, references to certain documents in other oil and gas case files are expressly allowed.

[4] Moreover, it was error for the Chief to continue to correspond with Miller after the notice of appeal was filed. When an appeal is filed with the Board of Land Appeals from a decision made by an official of the Bureau of Land Management, that official loses jurisdiction of the case and has no further authority to take any action concerning it until his jurisdiction over the matter is restored by action dispositive of the appeal. Utah Power and Light Co., 14 IBLA 372 (1974).

Miller is directed to respond to BLM's decision as though it were a request for additional information in order to determine whether the requirements of 43 CFR 3102.6-1(a)(2) have been met. His response need not be in the form of an affidavit, and he need not indicate whether his agent, if any, held an interest in the offer. However, he must indicate who affixed the facsimile signature to his offer card and, if it was done by another, he must indicate by what authority that person acted on his behalf. Miller will have 30 days from his receipt of this decision within which to submit this information, failing which his offer will be rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Edward W. Stuebing
Administrative Judge

We concur.

Frederick Fishman
Administrative Judge

Douglas E. Henriques
Administrative Judge

